

Clearwater Forest Plan Lawsuit Settlement
October 1993

Introduction- On October 6, 1993 a meeting was held with the Clearwater Supervisor, members of the staff and specialist group to develop the interpretations of the lawsuit settlement. Those who participated were: Dan Davis, Pat Murphy, Bill Wulf, Dallas Emch, Harry Jageman, Jerry Arsenia, Jim Caswell, Jim Mital, and Doug Gochnour. An additional brief review occurred with the Dist. NEPA coordinators on November 8, 1993. The following interpretations were accepted:

Settlement Implementation, Consistent Interpretations

Paragraph

- I. 1. - The FS agree to revise the Forest Plan. The settlement does not say how or what specific issues will be revised.
- The Notice of Intent will be published on or before March 13, 1995.
- The revision will follow the procedures outlined in 36 CFR 219 (Forest Planning Regulations) or any changes that occur prior to the publishing of the NOI. If regulations are changed after the NOI, we would need to get legal advice on what to do.

- II.2. - The current Forest Plan remains in effect until the revision is affective (signing of a new ROD).
- We should continue to make any necessary Forest Plan amendments during the interim period.
- Four interim provisions are in affect until the revision is affective.

LaRocco

- II.2.a. - No new roads or timber sale project decisions in lands covered by HR 1570 as of Sept. 93.
- Manage these lands under Forest Plan stdrd. B2 for the interim.
- Will apply to any additional lands added to HR 1570 or by another wilderness bill proposed by Idaho delegation.
- If an Idaho Wilderness Act is passed, lands not included in that act should revert to their original management prescription. (We may need to get approval of this from the judge).
- Does not apply to congressional proposals from outside of Idaho.

- Does not affect other types of project proposals (ie, trails)
- If HR 1570 dies in Congress, we are still bound by this interim measure until the revision is completed.
- NEPA analysis can continue in these areas up to the point of a decision.
- Does not affect activities in any other roadless areas.

80 mmbf/annual schedule

- II.2.b
- Affects all sales sold after October 1, 1993.
 - The settlement uses the term "sold" but I think we could define it actually as "offered" to be consistent with our MAR target reporting.
 - Salvage counts in the 80 mmbf except for catastrophic events.
 - A catastrophic event must exceed 50 mmbf and be caused by wind or fire. Fire could be from any cause.
 - Does not affect the ASQ of the Forest Plan.

Old Growth

- II.2.c.
- The FS agreed to make the NEPA jump directly to an EIS for projects proposals that directly affect an OG stand greater than 99 acres.
 - "Directly affects" means cutting trees within the OG stand. No buffer outside of the stand is intended.
 - Applies to new NEPA decisions made on or after January 1, 1994.
 - Applies only to timber harvest or new road construction.
 - Does not apply to reconstruction or maintenance of existing roads.
 - Applies to OG stands, or contiguous groups of stands (blocks), as defined in the timber data base and listed in the March 92 OG report, once they are verified. If new stands are identified and added to the March 92 list, greater than 99 acres, they would also be affected.
 - See the Interim OG Management Direction (October 1993) for specifics on how to define and verify OG.

Water Quality

- II.2.d.
- FS is committed to the goal of improving and maintaining water quality.
 - Applies to sediment only. Sediment affect will be measured at the mouth, or where it leaves the crosses the forest boundary, of the streams listed in Appendix K of the Forest Plan.
 - The settlement does NOT directly tie to the watersheds listed in the "Watershed Condition Summary, June 1992" (often called the red/yellow/green report) because watershed condition will change overtime. The interim measure applies to streams below standard at the time of the project planning.
 - If, during project site specific analysis, it is determined that the current standard is in-appropriate for a given watershed, a Forest Plan amendment would be required.
 - Determining that a stream will be called "below standard" will be done using professional judgement by the Forest hydrologist, soils scientist and fisheries biologist. Supporting information may include, but is not limited to:
 - a) Comparison of existing monitoring data to the fisheries cobble embeddedness.
 - b) Modeling
 - c) New monitoring information.
 - FS will proceed only with projects that result in no measurable increase in sediment. A project having no measurable affect could go forward.
 - "No measurable increase" means the sum total of the projects affects, including mitigation, as determined by the forest hydrologist, soils scientist and fisheries biologist. (ie, if the project adds 20 tons but also reduces 25 tons, we have an improvement over the no action).
 - "Technically possible" brings in the concept of cost/benefit. We will not be expected to spend \$10 to fix a problem causing only 5 cents of impact.
 - Mitigation measures should be applied prior to or concurrently with project implementation.
 - The decision maker (Ranger or Forest Supervisor) is responsible to insure that mitigation occurs.
 - An analysis of the watershed improvement opportunities should be done early in the NEPA process.
 - Applies to new road or timber sale EA's and EIS's, but CE's are excluded.

- Analysis methodology- "such as" will be determined by the ranger and hydrologist/biologist for each project and documented.

- This does not mean that new data will be needed in all cases. If stream surveys were done for a given stream in recent years and there is no reason to believe that a significant change has occurred; that data may be adequate for project analysis.

- Applies to new NEPA decisions signed on or after January 1, 1994.

- Monitoring will be planned and scheduled in the annual Soil and Water Monitoring Plan. This does not mean that each and every stream where a project occurs will be monitored. Selected, representative streams will be chosen in the Monitoring plan.

- Annual disclosure of watershed improvement objectives will be documented in the annual monitoring report. We may choose to also have a meeting with the plaintiffs to discuss accomplishments.

- It is recognized that opportunities may be limited in some watersheds due to existing natural or human caused factors.

III.3. - Settlement applies to all of us!

IV.4. - FS agrees to pay reasonable attorneys fees.

V.5. - Original lawsuit is dismissed but could be revived if the FS does not follow agreement.

- Has no affect on the ability of the plaintiffs to appeal or sue on any other project planning NEPA documents or the plan revision.